

REMARKS

The Examiner's non-final Office Action mailed November 24, 2006, has been carefully considered. In the instant application, claims 1-15 are pending. Claims 9 and 11-15 are withdrawn from consideration subject to a Restriction Requirement. Claims 1-8 and 10 are rejected and objected. In view of the forgoing amendment and the following remarks, the reconsideration and withdrawal of the present basis for rejecting the claims herein of this application is respectfully requested.

I. Discussion of the Amendment

Claims 1-8 are amended to limit the scope of the claims to the elected subject matter as defined by the Examiner at pages 2-3 of the Office Action.

Claim 1 is also amended to limit the substituents of R19 as -(C₁-C₄)-alkyl to a partial list of R13, i.e., excluding -(C₃-C₈)-cycloalkyl, phenyl, and heterocyclyl containing groups.

Claims 1-8 are also amended to limit the variable D to pyridyl.

Claims 1-8 and 10 are also amended to better and more clearly reflect what Applicants regard as their invention.

Applicants reserve their right to pursue the cancelled subject matter in a subsequent application.

Applicants submit that this amendment does not introduce any new matter.

II. Discussion of the Rejection Under 35 U.S.C. § 102(b)

Claims 1-8 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Labelle et al. US 6,436,965.

Applicants respectfully traverse the instant rejection and request reconsideration.

Applicants submit that Labelle et al. discloses Applicants' compounds of formula (I) wherein the variable D is phenyl or pyridyl, R3 is -(C₀-C₄)-alkylene-O-R19, and R19 is -(C₁-C₄)-alkyl substituted by phenyl or cyclopropyl. Claim 1 of the present application, however, clearly excludes D being a phenyl residue. Furthermore, in order to accelerate the prosecution of the present application, claim 1 has been amended to limit the variable D to be pyridyl only, and the definition of R19 has been amended to exclude -(C₃-C₈)-cycloalkyl and phenyl as the substituents of R19 when R19 is -(C₁-C₄)-alkyl. Thus, claim 1 of the present application does not encompass any compounds of Labelle et al. Therefore, Labelle et al. does not anticipate claim 1. Accordingly, Applicants respectfully request reconsideration and withdrawal of the

instant rejection on claim 1, as well as claims 2-8 and 10 by virtue of their dependency on claim 1.

III. Discussion of the Rejection Under 35 U.S.C. § 102(a) and 102 (e)

Claims 1-8 and 10 are rejected under 35 U.S.C. 102(a) or 102(e) as being anticipated by Nazare et al. US 6,906,084.

Applicants respectfully traverse the instant rejection and request reconsideration.

Applicants submit that Nazare et al. discloses Applicants' compounds of formula (I) wherein the variable D is phenyl. Claim 1 of the present application, however, clearly excludes D being a phenyl residue. Furthermore, in order to accelerate the prosecution of the present application, claim 1 has been amended to limit the variable D to be pyridyl only. Thus, claim 1 of the present application does not encompass any compounds of Nazare et al. Therefore, Nazare et al. does not anticipate claim 1. Accordingly, Applicants respectfully request reconsideration and withdrawal of the instant rejection on claim 1, as well as claims 2-8 and 10 by virtue of their dependency on claim 1.

IV. Discussion of the Rejection Under 35 U.S.C. § 103 (a)

Claims 1-8 and 10 are rejected under 35 U.S.C. 103(a) as being obvious over Labelle et al. US 6,436,965.

Applicants respectfully traverse the instant rejection and request reconsideration.

Applicants submit that Labelle et al. discloses Applicants' compounds of formula (I) wherein the variable D is phenyl or pyridyl, R3 is -(C₀-C₄)-alkylene-O-R19, and R19 is -(C₁-C₄)-alkyl substituted by phenyl or cyclopropyl. The amended claim 1 of the present application, however, only encompasses compound of formula (I) wherein the variable D is only pyridyl, and R19 as -(C₁-C₄)-alkyl is optionally substituted by substituents other than -(C₃-C₈)-cycloalkyl and phenyl. Labelle et al. does not teach or suggest in any way Applicant's compounds of formula (I) as claimed in the amended claim 1. Thus, Labelle et al. does not render claim 1 obvious. Accordingly, Applicants respectfully request reconsideration and withdrawal of the instant rejection on claim 1, as well as claims 2-8 and 10 by virtue of their dependency on claim 1.

Claims 1-8 and 10 are also rejected under 35 U.S.C. 103(a) as being obvious over Nazare et al. US 6,906,084.

Applicants respectfully traverse the instant rejection and request reconsideration.

Applicants submit that Nazare et al. discloses Applicants' compounds of formula (I) wherein the variable D is phenyl. Claim 1 of the present application, however, clearly excludes D

being a phenyl residue. Furthermore, in order to accelerate the prosecution of the present application, claim 1 has been amended to limit the variable D to be pyridyl only. Nazare et al. does not teach or suggest in any way Applicant's compounds of formula (I) as claimed in the amended claim 1. Thus, Nazare et al. does not render claim 1 obvious. Accordingly, Applicants respectfully request reconsideration and withdrawal of the instant rejection on claim 1, as well as claims 2-8 and 10 by virtue of their dependency on claim 1.

V. Discussion of the Obviousness-Type Double Patenting Rejection

Claims 1-8 and 10 are rejected under the judicially created doctrine of obviousness-double patenting as unpatentable over claims 1 and 6 of Nazare et al. 6,906,084.

Applicants respectfully traverse the instant rejection and request reconsideration.

As discussed above in section IV, Nazare et al. discloses Applicants' compounds of formula (I) wherein the variable D is phenyl. Claim 1 of the present application, however, clearly excludes D being a phenyl residue. Furthermore, in order to accelerate the prosecution of the present application, claim 1 has been amended to limit the variable D to be pyridyl only. Claim 1 does not encompass any compounds of Nazare et al., and Nazare et al. does not teach or suggest in any way Applicant's compounds of formula (I) as claimed in the amended claim 1. Thus, Nazare et al. does not render claim 1 obvious. Accordingly, Applicants respectfully request reconsideration and withdrawal of the instant rejection on claim 1, as well as claims 2-8 and 10 by virtue of their dependency on claim 1. No terminal disclaimer needs to be filed.

VI. Conclusion

In view of the above remarks, it is respectfully submitted that the present application is in condition for allowance. Early notice to this effect is, thus, respectfully requested.

Respectfully submitted,

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